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## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-203119

DATE: February 3, 1982

MATTER OF: Potomac Industrial Trucks, Inc.

## DIGEST:

1. Failure to take exception to salient characteristics listed in the IFB does not itself legally obligate a bidder to supply a product that will satisfy the Government's minimum needs.
2. Bid that fails to offer a product that meets the salient characteristics in a brand name or equal solicitation is nonresponsive since it does not conform to a material requirement of the specifications.

Potomac Industrial Trucks, Inc. protests the cancellation of invitation for bids (IFB) No. 10-0061-1 by the Kennedy Space Center, National Aeronautics and Space Administration (NASA). NASA's decision was based on its conclusion that none of the bids received was responsive to the IFB. Potomac maintains that its bid was responsive. For the reasons that follow, the protest is denied.

The IFB requested bids for the purchase of a forklift truck Clark Model 30B or equal. A list of the salient characteristics which the offered product had to meet was included in the IFB. Bidders who proposed to provide "equal" products were required to furnish descriptive materials with their bids which would clearly indicate that the items proposed would satisfy the salient characteristics stated in the IFB.

Bidders were warned that:

"Failure of a bidder's descriptive material to cover each of the salient characteristics will require rejection of the bid (except when descriptive material can be located within the procuring activity). Descriptive literature deficiencies cannot be remedied after bid opening, nor is the Contracting Officer authorized to communicate with bidders concerning any such deficiencies." (Emphasis in original.)

One of the salient characteristics for the forklift truck was that it have "dual adjustable headlights and one combination stop - taillight." NASA states that headlights and taillights are absolutely essential since the forklift truck being procured will be used at night. According to NASA, Potomac's bid proposed an "equal" product, rather than the "brand name" product specified. Although there were no descriptive materials enclosed with Potomac's bid, the contracting officer's files did contain the appropriate manufacturer's specifications sheets for the offered item. The manufacturer's specification did not show headlights and taillights as a standard or an optional feature. NASA concluded that Potomac's bid was not responsive to the IFB's list.

Potomac argues that it did not offer an "equal" forklift truck, but rather the brand name product. In this regard, Potomac claims that when it received the IFB, it noticed that the forklift truck had been improperly designated as a "Clark Model 30B." Since the Clark catalogs do not list a truck by that number, Potomac assumed that there was no such unit and that NASA meant to refer to a Clark model "TW30." Potomac asserts that it orally brought this discrepancy to the attention of the contracting officer, and was advised that it should simply propose the correct model number in its bid. Thus, Potomac simply proposed to furnish a "Clark TW30" with the expectation that this would be treated as a "brand name" bid and would obligate it to provide a unit which satisfied the list of salient characteristics. Consequently, no descriptive materials were submitted by Potomac with its bid.

Potomac concedes that nowhere in its bid does it explicitly state or show that its truck would be equipped with headlights and taillights. However, Potomac maintains that its bid price was calculated with the expectation that its unit would provide such lights. Potomac offers a copy of its worksheet which suggests that it calculated an additional amount for an item designated as "lights" into its bid in order to cover the cost of installing lights. Potomac also argues that by signing the bid without taking any exception to the salient characteristics listed, it obligated itself to deliver a forklift truck which complied with the IFB's list of salient characteristics.

We understand from the manufacturer of the brand name item that the proper designation for the specified truck is "TW30" and that there is no current Model "30B." This does not help the protester, however. Headlights and taillights are not a normal feature of the TW30, and thus even if Potomac should have been viewed as bidding on the brand name item, it would still have been required to show the appropriate modifications that would be made to the TW30 to meet the requirement of the salient characteristics. See General Hydraulics Corporation, B-181537, August 30, 1974, 74-2 CPD 133, where we recognized that the Government may properly specify characteristics that go beyond those of the designated brand name product when those characteristics represent essential needs of the agency, and that, at least in cases where the bidder is not misled by the requirement, it is proper to reject a bid that does not show conformance with the characteristics. Here, of course, Potomac admits that it was advised of the requirement for lights.

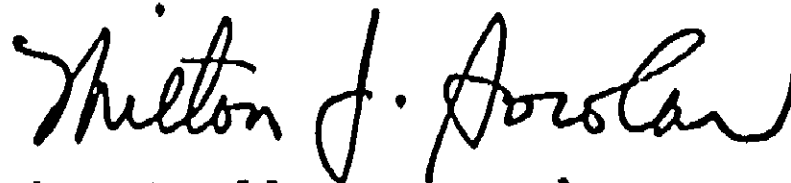
To permit Potomac to submit information relative to its bid (such as its worksheet) which was not publicly available to the contracting agency prior to opening would confer an unfair competitive advantage upon Potomac by permitting it to affect the responsiveness of its bid after bid opening. See, for example, B-175009, March 28, 1972; Lektro Inc., B-202212, June 15, 1981, 81-1 CPD 484.

Thus, what is in issue here is not whether Potomac intends to furnish a forklift truck which complies with the list of salient characteristics as it claims, but rather whether its bid contained sufficient information to permit NASA to conclude that the truck offered by Potomac conformed to a material requirement of the specifications and whether Potomac would be legally obligated to provide a truck which

satisfied the Government's needs. See 49 Comp. Gen. 195 (1969). We agree with NASA that Potomac's bid was deficient in this respect and that it was therefore properly rejected as nonresponsive. Potomac's failure to take exception to the requirement would not cure the defect. We therefore conclude that the solicitation properly was canceled.

We point out, however, that it is technically incorrect for a solicitation to specify, as a salient characteristic of a brand name product, a design or performance requirement which in fact is not a feature of the brand name model. A solicitation that does so may mislead bidders, particularly those who would bid on furnishing the brand name product, and could result in a defective solicitation. See General Hydraulics Corporation, supra; Instrumentation Marketing Corporation, B-182347, January 28, 1975, 75-1 CPD 60. While, as stated above, an agency may specify requirements that go beyond those met by a brand name product, they should be clearly set forth in the solicitation as features which are required in addition to the salient characteristics of the specified brand name product; they should not be identified as actual salient characteristics of the specified product.

The protest is denied.



Acting Comptroller General  
of the United States